

This letter concerns cellular phones given to customers when those customers enter into contracts with cellular service providers. See 86 Ill. Adm. 150.305(c). (This is a GIL.)

June 16, 2004

Dear Xxxxx:

This letter is in response to your letter dated July 28, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings, and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is an inquiry regarding sales taxes of selling cellular phones. An example is: when we sell cellular phones for a provider to a consumer, and the consumer signed a one to three year contract with the provider, the cell phone is free to the customer. The way the retailer gets paid is by way of rebates from the dealer for every cell phone that is activated. How's the sales taxes applied to the consumer?

Your cooperation and attention is appreciated in this matter.

**Department's Response:**

Your letter indicates that you receive a rebate from the cellular service provider for activating a cellular phone for a customer who enters into a service agreement with the service provider. The customer receives the phone for free. Based upon the limited information provided, it appears that you are technically selling the phone to the service provider. The service provider apparently directs you to give the phone to the customer. The service provider in this instance is a "donor". See 86 Ill. Adm. 150.305(c), enclosed. Your "gross receipts" for the sale of the phone consist of whatever portion of the rebate from the service provider is payment to you for the phone. You should give a

resale certificate to your phone supplier when you purchase the phone. When you sell the phone to the service provider, you owe Retailers' Occupation Tax and applicable local tax on your gross receipts, and the service provider owes the corresponding Use Tax and applicable local tax reimbursements. See 86 Ill. Adm. Code 150.130 (enclosed) concerning Accounting for the Tax, which explains this provision. The customer does not incur a legal obligation to pay any tax under these circumstances. It is important that you keep records of the amount of gross receipts you receive for sale of the phone. If you do not, an auditor will use his best information and judgment to determine the amount of gross receipts.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore  
Associate Counsel

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